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THE TEXAS WATER JOURNAL is an online, peer-reviewed journal devoted to the timely consideration of Texas water resources management and policy issues. The journal provides in-depth analysis of Texas water resources management and policies from a multidisciplinary perspective that integrates science, engineering, law, planning, and other disciplines. It also provides updates on key state legislation and policy changes by Texas administrative agencies.

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Cover photo: Anzalduas Dam in Hidalgo County. Photo courtesy of the Texas Water Development Board.

84th Texas State Legislature: summaries of water-related legislative action

Editor-in-Chief's Note: September 1 of every odd-numbered year is the date when new legislation from the most recent session of the Texas Legislature typically goes into effect. With this in mind, the Texas Water Journal invited 4 organizations that work closely with the Texas Legislature to provide their take on the changes to Texas water policy and law that were made during the 2015 session. The opinions expressed in these summaries are the opinions of the individual organizations and not the opinions of the Texas Water Journal or the Texas Water Resources Institute.

Organizations:

- Texas Water Conservation Association
 - Sierra Club, Lone Star Chapter
 - Texas Alliance of Groundwater Districts
 - Texas Water Infrastructure Network
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Terms used in paper

Short name or acronym	Descriptive name
ASR	aquifer storage and recovery
CMAR	construction manager-at-risk
DFC(s)	desired future condition(s)
ERCOT	Electric Reliability Council of Texas
GCD(s)	groundwater conservation district(s)
HB	House Bill
PUC	Public Utility Commission of Texas
SB	Senate Bill
SOAH	State Office of Administrative Hearings
SWIFT	State Water Implementation Fund for Texas
TAGD	Texas Alliance of Groundwater Districts
TCEQ	Texas Commission on Environmental Quality
TDLR	Texas Department of Licensing and Regulation
TDS	total dissolved solids
TWCA	Texas Water Conservation Association
TWDB	Texas Water Development Board
TxWIN	Texas Water Infrastructure Network

84TH LEGISLATIVE SESSION WRAP-UP

By Dean Robbins, Stacey Allison Steinbach, Texas Water Conservation Association

The “Groundwater Session”

Like the 83rd session, it was no surprise when the 84th Legislature was inundated with water bills. This time, however, the main focus was on groundwater management rather than state water plan funding. With the latter issue largely addressed through legislative action and voter approval in 2013, legislators turned their attention to some long-standing groundwater policy issues this year. From the perspective of the Texas Water Conservation Association (TWCA), those groundwater bills and the river authority sunset bill comprised the bulk of high-priority tracked legislation that made it to the Governor’s desk.

Session statistics

In the House, the Natural Resources Committee continued to hear most of the bills affecting TWCA members. Though the committee had a number of familiar faces, both the Chair, Representative Jim Keffer, and Vice-Chair, Representative Trent Ashby, were new to that committee’s leadership this session and provided a great opportunity for collaboration and new perspectives. Other committee members included Representatives Dennis Bonnen, DeWayne Burns, James Frank, Kyle Kacal, Tracy King, Lyle Larson, Eddie Lucio III, Poncho Nevárez, and Paul Workman.

Similarly, freshman Senator Charles Perry led the newly created Agriculture, Water, and Rural Affairs Committee that addressed the bulk of the water bills considered this session. Senator Judith Zaffirini served as Vice-Chair of the 7-member committee that also included Senators Brandon Creighton, Bob Hall, Juan “Chuy” Hinojosa, Lois Kolkhorst, and José Rodríguez.

All told, legislators filed 6,276 House and Senate bills this session, up more than 400 bills from the session before. Of those, just over 20% passed, compared to a 24% passage rate during the 83rd. TWCA tracked over 350 bills this session, including 142 priority bills, numbers that are nearly identical to our tracked bill counts in 2013. Thirty-four high-priority bills made it to the Governor this year, and we have outlined 23 here in this article. For more information about TWCA and legislation that we tracked this session, visit TWCA’s website at www.twca.org.

TWCA Groundwater Committee

On the groundwater front, the beginning of the 84th felt like something of a “do over” from previous sessions, with the refiling of numerous bills that failed to pass in the 83rd or before.

But the end of the 84th looked a lot different from the end of the 83rd: legislators passed more than 20 separate pieces of groundwater legislation this year but sent just 2 groundwater bills to the Governor’s desk in 2013.

One significant difference between the 2 sessions was the stakeholder work that occurred before the 2015 session. Shortly after the close of the 83rd Legislature, TWCA established a “Groundwater Committee” to address issues that were left on the table at sine die. More than 60 TWCA members, representing numerous stakeholder groups, joined the committee and began the arduous process of tackling controversial groundwater issues such as aquifer storage and recovery (ASR), brackish groundwater management, long-term groundwater permitting, appeals of desired future conditions (DFCs), contested case hearings on groundwater permits, apprentice programs for well drillers and pump installers, the State Auditor’s Office review of groundwater conservation districts (GCDs), and cleaning up a very fractured Chapter 36 of the Water Code.

The committee formed multiple subcommittees and drafting groups, and met frequently throughout 2013 and 2014, ultimately achieving consensus on 7 pieces of draft groundwater legislation. To reach consensus, 90% of the voting members had to support the draft—a noteworthy accomplishment considering the diversity of stakeholders on the committee. The committee and TWCA staff worked closely with House and Senate leadership in an effort to move these bills through the legislative process, and 6 of them made it to the Governor’s desk. Summaries of those bills are included in the next section, with summaries of TWCA’s other high priority bills in the following section.

TWCA Groundwater Committee bills

House Bill (HB) 655: Aquifer Storage and Recovery (Larson/Perry)

Chapters 11 and 27, Water Code, are amended to streamline permitting requirements for aquifer storage and recovery (ASR) projects, making it easier and more cost efficient to initiate an ASR project. The bill gives the Texas Commission on Environmental Quality (TCEQ) exclusive jurisdiction over ASR projects so long as the water produced by the project does not exceed the amount authorized for withdrawal by the TCEQ. Withdrawals above the amount authorized by the agency will be subject to a GCD’s spacing, production, and permitting rules and fees, as applicable. All wells will continue to be subject to GCD registration requirements.

The bill also clarifies that a surface water right amendment is not needed to store appropriated surface water in an ASR

project prior to beneficial use, an important amendment as the prior language was a significant hindrance to ASR projects. Finally, the bill outlines water quality and quantity considerations that must be made by the TCEQ, as well as reporting and monitoring requirements that must be followed by project developers.

HB 930: TDLR Bill (Miller/Perry)

Chapters 1901 and 1902, Occupations Code, are amended to authorize the Texas Department of Licensing and Regulation (TDLR) to reinstate apprentice programs for water well drillers and pump installers. TDLR abandoned earlier versions of these programs in 2012 after it determined the agency lacked the requisite statutory authority to implement them.

HB 1221: Sellers' Disclosure Bill (Lucio III/Estes)

Chapter 5, Property Code, is amended to require a seller of residential property to disclose whether any portion of the property is located in a GCD or a subsidence district.

HB 2179: Contested Case Hearings Bill (Lucio III/Perry)

Chapter 36, Water Code, is amended to streamline and clarify permit hearings processes before GCDs.

HB 2767: Chapter 36 Clean Up Bill (Keffer/Perry)

Chapter 36, Water Code, is amended throughout to make corrective changes and clarifications necessitated by the many amendments made to the chapter over the past decade.

Senate Bill (SB) 854: Permitting Bill (Zaffirini/Lucio III)

Chapter 36, Water Code, is amended to require a GCD to automatically renew a production permit provided that prescribed conditions are met and no conditions have changed. If the holder of a permit requests a change that requires an amendment, the existing permit remains in effect until the amendment process is completed. A GCD may initiate an amendment to a permit in accordance with the GCD's rules.

Other bills of interest

HB 30: Brackish Groundwater (Larson/Perry)

Chapter 16, Water Code, is amended to require the Texas Water Development Board (TWDB) to further study the development of brackish groundwater, including the identification and designation of brackish groundwater production zones that can be used to significantly reduce the use of fresh groundwater. The TWDB must determine amounts of brackish groundwater that may be produced in a zone over a 30- and 50-year period. Certain areas are excluded from study. Studies must be completed by 2022. Regional planning groups must

identify opportunities for and the benefits of developing large-scale desalination facilities for seawater or brackish groundwater in designated zones.

HB 200: Appeal of Desired Future Conditions (Keffer/Perry)

Chapter 36, Water Code, is amended to define "best available science;" to add "in order to protect property rights, balance the development and conservation of groundwater to meet the needs of this state, and use the best available science in the development of groundwater" to the purposes of the chapter; to limit a district's recovery of attorneys fees to those issues on which the district prevails; to establish a contested case hearing process for the appeal of a DFC via a hearing at the State Office of Administrative Hearings (SOAH); and to repeal the process for appeal of a DFC to the TWDB.

HB 1232: Texas Water Development Board Mapping (Lucio III/Estes)

The TWDB, not later than December 31, 2016, must conduct a study of the hydrology and geology of confined and unconfined aquifers in Texas to determine quality and quantity, whether those aquifers are tributary or non-tributary, their contributions to surface water, and their contributions to other aquifers.

HB 1378: Financial Reporting of Debt Information (Flynn/Bettencourt)

Chapter 140, Local Government Code, is amended to require political subdivisions to annually compile and report certain comprehensive financial information. The information must either be posted on the political subdivision's website or provided to the Comptroller for posting. Alternatives are provided for a municipality with a population of less than 15,000 or a county with a population of less than 35,000. A district as defined by Section 49.001, Water Code, satisfies the requirements if the district complies with the requirements in Chapter 49, Subchapter G, relating to audit reports, affidavits of financial dormancy, and annual financial reports, and submits the financial documents to the Comptroller.

HB 1665: Notice to Property Owners along Impoundments (Bonnen/Kolkhorst)

Chapter 5, Property Code, is amended to require notice of water level fluctuations to purchasers of residential or commercial property adjoining an impoundment with a capacity of at least 5,000 acre feet.

HB 1902: Graywater Regulation (Howard/Zaffirini)

The Health and Safety Code and the Water Code are amended to add a definition of "alternative on-site water"

and to expand TCEQ's authority to adopt and implement minimum standards for the indoor and outdoor use and reuse of treated graywater and alternative on-site water.

HB 1919: Invasive Species (Phillips/Estes)

Chapter 66, Parks and Wildlife Code, is amended to exempt certain water transfers by a political subdivision from prohibitions and permitting requirements associated with the transfer of invasive species into water of this state.

HB 2031: Marine Seawater Desalination (Lucio III/Hinojosa)

The bill amends Chapter 11, Water Code, to exempt the diversion and use of marine seawater with total dissolved solids (TDS) of more than 10,000 milligrams/liter from permitting requirements. The TCEQ is directed to permit by rule bed and banks authorizations for the movement of marine seawater. Chapter 16, Water Code, is amended to further encourage marine seawater desalination projects. A new Chapter 18, Water Code, is added to provide authorization to political subdivisions for marine seawater projects, to further define the jurisdiction of state agencies over these projects, and to require streamlined permitting processes for them. The Health and Safety Code is amended to streamline TCEQ approvals of desalination projects providing potable water.

HB 3357: Notice of Political Subdivision Meetings (Lucio III/Eltife)

The Government Code is amended to authorize a political subdivision to post notice of a meeting on its website as an alternative to the requirement to provide notice to the county clerk.

HB 4097: Seawater Desalination Projects (Hunter/Kolkhorst)

The Health and Safety Code is amended to require the TCEQ to adopt rules for the use of desalinated seawater for non-potable uses. The Utilities Code is amended to require a study of infrastructure needs for the transmission of desalinated seawater and the demand response potential of seawater desalination projects. Chapter 11, Water Code, is amended to authorize diversions of water from the Gulf of Mexico for industrial purposes without notice or an opportunity for a contested case hearing. Water availability requirements are also waived, and the TCEQ may include environmental flows provisions. Chapter 26, Water Code, is amended to establish procedures for the issuance of permits to dispose of brine into the Gulf of Mexico from the desalination of seawater as part of an industrial process. Chapter 27, Water Code, is amended to authorize a general permit for an injection well for the disposal of brine produced by the desalination of seawater.

SB 523: Sunset Review of River Authorities (Birdwell/Keffer)

Chapter 325, Government Code, is amended to subject 18 entities listed in the legislation to a limited review under the Texas Sunset Act. The entities may not be abolished. Each entity must pay the cost incurred by the Sunset Commission in performing a review. A political subdivision reviewed by the commission under this bill may not be required to conduct a management audit by the TCEQ. Conforming amendments are made to various chapters of the Special District Local Laws Code and a schedule for review is established.

SB 695: Coastal Barrier System Study (Taylor/Faircloth)

A joint interim committee is established to study the feasibility and desirability of creating and maintaining a coastal barrier system to prevent storm surge damage.

SB 709: Environmental Permitting Procedures (Fraser/Morrison)

Chapter 2003, Government Code, is amended for certain TCEQ-contested cases referred to SOAH, the bill limits issues that may be considered and establishes timelines for completion of the proceeding. It also establishes that the applicant's filing, the Executive Director's preliminary decision, and any other supporting documentation establish a prima facie demonstration that the draft permit meets all state and federal requirements and issuance of the permit, if consistent with the draft, would protect human health and safety, the environment, and physical property. Criteria for rebutting such a demonstration are provided. The legislation applies to applications under Chapters 26 & 27, Water Code, and to Chapter 361, Health and Safety Code. Related changes are made to Chapter 5, Water Code.

SB 912: Wastewater Spill Reporting Exemption (Eltife/Crownover)

Chapter 26, Water Code, is amended to exempt from reporting by local governments certain accidental spills of wastewater that have a volume of 1,000 gallons or less.

SB 1148: Economic Regulation of Water and Sewer Service (Watson/Geren)

Numerous changes are made to Chapter 13, Water Code, relating to the water and wastewater rate jurisdiction of the Public Utility Commission (PUC). Changes relate to disclosure by a municipally owned utility, required notices, time lines for rate cases, and procedures for emergency orders.

SB 1267: Administrative Procedure Act (Estes/Clardy)

This bill makes comprehensive changes to procedures for contested case hearings at SOAH.

SB 1812: Eminent Domain Database (Kolkhorst/Geren)

Chapter 2206, Government Code, is amended to require the comptroller to create and make accessible on an Internet website an eminent domain database for public and private entities authorized to exercise the power of eminent domain. The database must be updated at least annually. Not later than February 1 of each year, these entities must provide prescribed information to the comptroller. Penalties are established for non-compliance.

SIERRA CLUB: EVOLUTION, NOT REVOLUTION, IN WATER POLICY

By Ken Kramer, Water Resources Chair, Lone Star Chapter, Sierra Club

Long-time observers of the Texas Legislature have noted that when state legislators tackle a major public policy issue in 1 legislative session, they rarely put that issue back on the front burner in the next regular session. Such was the case with water in the 84th Texas Legislature. After proposing major new state funding for water projects in 2013, approved by the voters as a state constitutional amendment, the Legislature in 2015 did not make water resources a priority topic. Important water bills were enacted, but they represented an evolution, not a revolution, in state water policy.

Furthermore, while Texas is making progress on water conservation and efficiency—and some new bills add to that progress, water development continues to be the major impetus for water legislation, and water suppliers and economic interests seeking to gain from new water projects continue to play a prime role in the politics of water. Nevertheless, these development interests were not totally successful in 2015. An informal alliance among rural interests, East Texas legislators, “Tea Party” conservatives, and environmental groups, for example, stopped the infamous water “gridzilla” proposal for turning Texas into a statewide plumbing system.

Groundwater and aquifer storage and recovery (ASR)

In the 2015 session the water topic that generated the most attention and largest number of water bills passed was groundwater management. A number of bills addressed issues left unresolved at the end of the 2013 session, including major subjects such as brackish groundwater development, aquifer storage and recovery (ASR), and groundwater district operations and processes.

There is an ongoing tension between the statutory declaration made several years ago that “groundwater districts are the preferred means of groundwater management” and the unwillingness of many legislators to give districts the powers, financial resources, and freedom to carry out their mission effectively. Certainly there are legitimate questions about whether single-county districts that only manage parts of an aquifer (the largest number of districts in the state) are the best way to oversee these vital water sources. However, the Legislature took reasonable steps a decade ago to establish a balance between a heavy reliance on single-county districts and the need for aquifer-wide management by creating the joint planning process for districts overlying the same aquifer.

Debate over that process aside, the fact is that groundwater districts have had to fight hard to maintain existing authority in recent legislative sessions from a disparate group of interests, including groundwater marketers, some urban water utilities, oil and gas companies, and some landowners asserting

absolute rights of groundwater ownership. That continued to be the case in 2015, although some conflict was ameliorated by a negotiating process conducted under the auspices of the Texas Water Conservation Association (TWCA) during the interim following the 2013 session. That process produced a number of draft groundwater bills that were enacted into law in 2015, along with some other legislation that, with some exceptions, reflected compromises among the interests.

Several groundwater bills dealt primarily with groundwater conservation district (GCD) operations and processes. These included:

- House Bill (HB) 200 made changes to the process by which groundwater districts determine desired future conditions (DFCs) for aquifers under their management and set out detailed procedures for challenges to those DFCs
- HB 2179 set out in more detail the process for contested case hearings on applications for permits issued by groundwater districts and the specific manner in which the administrative law judge conducting a hearing and the district board interacts
- HB 2767 made a number of updates and minor changes to Chapter 36 of the Texas Water Code (which governs most groundwater districts) but also established detailed procedures for an “affected person” to challenge failure of a groundwater district to take a number of actions to protect the groundwater sources for which it is responsible, including failure to adopt or update DFCs
- Senate Bill (SB) 854 established a requirement that operating permits issued by a groundwater district be automatically renewed, subject to certain conditions, but allowed a district to initiate amendments to such operating permits

These bills taken together seem to indicate a desire by legislative leaders to be more “directive” in determining how GCDs should operate. On the one hand, this limits the flexibility of the districts. On the other hand, the additional specifics may lessen some controversies over groundwater district actions (or in some cases inaction) because certain procedures and powers have been clarified. However, continued pressure for groundwater development likely means that fights over groundwater use will continue or intensify.

That situation was evident in the legislative fight over whether and how to bring certain portions of the Trinity Aquifer (primarily in Hays County) under management by a groundwater district. The threat of development of a heretofore unregulated part of the Trinity eventually resulted—after last-minute legislative drama—in the Barton Springs-Edwards Aquifer Conservation District in southern Travis and Hays

counties being given (through HB 3405) jurisdiction over the part of the Trinity Aquifer within its territory.

Another fight over groundwater management manifested itself in HB 2647—legislation that, although compromised during the process, sought to restrict the ability of groundwater districts to limit groundwater production used for power generation or mining. In a somewhat surprising move, the Governor vetoed that legislation on the grounds that allowing the state to give priority to 1 class of groundwater users might abridge the rights of other groundwater users and that any such decisions should be made at the local level based on sound science and public input.

Although there were other groundwater bills, probably the 2 most important bills related to this water resource enacted in 2015 were HB 30 and HB 655. The bills focus respectively on 2 water supply options: brackish groundwater development and ASR.

Texas has abundant brackish groundwater sources, according to Texas Water Development Board (TWDB) estimates. However, it is not always clear how and where those brackish groundwater sources may be developed and used without, for example, affecting freshwater sources or having other impacts. HB 30 will move the state forward in being able to make those determinations. The legislation, among other things, requires the TWDB, working together with groundwater districts and stakeholders, to identify and designate brackish groundwater “production zones” in certain parts of the state that are most appropriate for development of that resource. Specific areas of focus for research to make those initial determinations, as noted in HB 30, are the portion of the Carrizo-Wilcox Aquifer between the Colorado River and the Rio Grande, the Gulf Coast Aquifer, the Blaine Aquifer, and the Rustler Aquifer. One of the most positive things about the passage of HB 30 was the fact that an appropriation of \$2 million to the TWDB for brackish groundwater studies became effective with the enactment of this new law. In a testament to the remaining political strength of groundwater districts at the Capitol, initial provisions of HB 30 that would have limited the authority of groundwater districts to manage brackish groundwater were dropped before passage of the bill.

The power of groundwater districts was diminished somewhat, however, by the passage of HB 655—the “ASR bill.” ASR, where either surface water or groundwater is injected into an aquifer for storage and withdrawal later when needed, is getting increased attention as a water supply option, spurred by a successful ASR project undertaken by the San Antonio Water System. ASR, where feasible, has major advantages over storage of water in surface water reservoirs in Texas, where high evaporation rates and eventual sedimentation result in major water loss. The thrust of HB 655 was to streamline the process for review and approval of ASR projects, including the elimination of outmoded requirements in the permitting process at

the Texas Commission on Environmental Quality (TCEQ).

A potential complication with HB 655 is that it eliminated any authority for groundwater districts to govern injection or withdrawal of water from aquifer formations under their jurisdiction with the exception of limited circumstances in which the amount of water withdrawn from an aquifer exceeds the volume of water injected. Approval of injection of water will be within TCEQ’s jurisdiction, although a groundwater district might provide input to that permitting process. Implementation of HB 655 will need to be monitored to see that ASR projects are properly vetted.

Seawater desalination

While brackish groundwater development and ASR have been getting a lot of “buzz,” perhaps the holy grail of water developers is the prospect of an “unlimited supply” of seawater off the Texas coast. Many people see seawater desalination as “drought-proof” (as long as one ignores the water requirements for electric power generation for the desalination). But a clear framework for permitting seawater desalination has not been in place. Moreover, concerns about the power requirements of energy-intensive desalination and the impacts of disposal of the concentrates left after desalination and related cost issues have tempered enthusiasm for seawater desalination.

Two bills that passed the Legislature in 2015 seek to facilitate seawater desalination. One bill, HB 4097, dealt primarily with desalination of seawater for industrial water use. Some of its provisions, however, call for the Public Utility Commission (PUC) in cooperation with the Electric Reliability Council of Texas (ERCOT) to conduct studies on electrical power issues affecting seawater desalination in general. One study is to evaluate whether “existing [electric power] transmission and distribution planning processes are sufficient to provide adequate infrastructure for seawater desalination projects.” A second study is to determine “the potential for seawater desalination projects to participate in the existing demand response opportunities in the ERCOT market.”

With regard to authorizing seawater desalination projects for industrial water use, HB 4097 makes changes to Chapter 11 of the Texas Water Code that differentiate requirements for such projects depending upon the location of the diversion of seawater to be desalinated. If the point of diversion of seawater is less than 3 miles seaward of the Texas coast or the seawater diverted contains a total dissolved solids (TDS) concentration of less than 20,000 milligrams per liter, then the project must obtain a permit from the TCEQ for the diversion. That permit application is subject to most of the general provisions of Chapter 11, including the opportunity for a contested case hearing on the permit. If the point of diversion is 3 or more miles seaward of the coast or the seawater diverted has a TDS of less than 20,000 milligrams per liter, then the seawater

ter desalination project is not required to obtain a permit for diversion from the TCEQ.

HB 4097 also authorizes the TCEQ to require either individual or general permits for the discharge into the Gulf of Mexico (within the territorial waters of the state) of brine and other concentrates from a seawater desalination facility that produces water for industrial use. The bill also authorizes the TCEQ to allow disposal of concentrate from seawater desalination into an injection well.

HB 2031 takes a somewhat different approach on seawater desalination (termed “marine seawater”). This legislation creates a new Chapter 18 of the Water Code that outlines alternative processes that a seawater desalination project may use instead of the usual processes in Chapter 11 and Chapter 26 respectively for obtaining TCEQ authorization for diversion of water and discharge of concentrate. Chapter 18 specifically prohibits diversion or discharge into a bay or estuary and requires the TCEQ to prescribe by rule reasonable measures to minimize impingement and entrainment of marine species during the diversion of seawater. The new Chapter 18 has the same “bright lines” as in HB 4097, however, for determining whether a seawater desalination project must obtain a permit from the TCEQ for a diversion—the not-less-than 3 miles seaward or a TDS concentration of less than 20,000 milligrams per liter. Only within those parameters is a permit required.

An interesting aspect of HB 2031 is the requirement that the Texas Parks and Wildlife Department and the General Land Office jointly “conduct a study to identify zones in the Gulf of Mexico that are appropriate for the diversion of marine seawater, taking into account the need to protect marine organisms.” This joint study is to be completed and a report submitted to the TCEQ by September 1, 2018. The report is to include recommended diversion zones, and the TCEQ is tasked, based on that report, to designate by rule appropriate diversion zones by September 1, 2020. Seawater desalination projects authorized after that time, whether by permit or not, must locate their diversions within those designated zones. Prior to that time, a seawater desalination project developer is required to consult with the Texas Parks and Wildlife Department and the General Land Office on appropriate diversion points. HB 2031 provides parallel requirements for the location of discharges of concentrates, and discharge zones may be the same as or overlap diversion zones.

Whether this new legislation actually jump starts seawater desalination projects remains to be seen. Many municipal water suppliers are wary of pursuing such projects because of the costs, although the Guadalupe-Blanco River Authority has now obtained funding from the TWDB for a feasibility study of a proposed project. Some observers believe that seawater desalination for industrial water use, especially in the Corpus Christi area, is more likely in the near term than municipal

projects. The bottom line is that the Legislature has established a clearer road map for the authorization of such projects, but it is not clear how many people are going to start down that road.

Water conservation and reuse

Water conservation and reuse were not major topics in the 2015 legislative session. Two positive but relatively minor pieces of legislation related to water were enacted:

- SB 551 specifically authorizes the state Water Conservation Advisory Council to make recommendations for legislation to advance water conservation (there had been disagreement about whether or not the Council had such authority)
- SB 1356 establishes a sales tax “holiday” for the purchase of water-conserving products. Similar to the annual sales tax holiday for energy efficient products, any water-conserving products, as defined in the bill, purchased during the 3-day Memorial Day weekend are exempt from payment of sales tax

Water conservation did receive some attention in HB 1—the appropriations bill—although not all of the attention was positive. Approximately \$3.5 million was appropriated to the TWDB for “Water Conservation Education and Assistance” for FY 2016, and \$2.5 million was appropriated to the agency for that purpose for FY 2017. Rider 26 to the TWDB appropriations specifies that \$1.125 million each year out of those amounts shall be used to meet the municipal water conservation goals of the 2012 state water plan. The rider further notes that these funds are to be used by the agency “to develop and manage a provider contract to deliver the most cost effective and accurate process by which to measure water conservation statewide.” This appropriation has not been made in the past.

One water conservation item in the FY 2016/FY 2017 appropriations bill did not make it past the Governor. Rider 20 to the TWDB appropriations directed \$1 million out of the line item for Water Conservation Education and Assistance for FY 2016 to be earmarked for “Water Conservation Education Grants,” a competitive grant program for water conservation education groups that was first funded in the 2014-2015 biennium. Governor Abbott vetoed that rider, saying that activities supported by this funding were duplicative of other water conservation education (an argument panned by water conservation advocates). At this time the validity of the Governor’s veto of this and other riders has been called into question by the Legislative Budget Board executive director, and the fate of these grants is unclear.

What is clear, however, is that there is legislative interest in encouraging and expanding the use of graywater and “alternative on-site water,” forms of water “reuse.” Graywater has been defined in the Texas Water Code as “wastewater from

clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for disposal of hazardous or toxic ingredients.” Graywater use has been slowly increasing but primarily for lawn, garden, and golf course irrigation.

A bill enacted into law in the 2015 session—HB 1902—expands the potential use of graywater by requiring the TCEQ to adopt by new standards for both indoor and outdoor use of this source, including for toilet and urinal flushing. The legislation further requires the TCEQ to adopt new standards for “alternate on-site water”—defined as “rainwater, air-conditioner condensate, foundation drain water, storm water, cooling tower blowdown, swimming pool backwash and drain water, reverse osmosis reject water, or any other source of water considered appropriate by” the TCEQ. This legislation could prove to be significant in the long term depending upon what standards are adopted and how strongly the use of graywater and alternate on-site water is encouraged.

The Water “Gridzilla”

Perhaps the most controversial water legislation of the session was the proposed state water grid—a massive system to move water around Texas (with the possible importation of water into Texas from other states). The Sierra Club labeled this monstrous water concept a water “gridzilla.”

The proposal came in the form of 2 companion bills introduced in the House and the Senate: HB 3298 and SB 1907. As introduced, the legislation would have directed the TWDB to do the following:

- Conduct a study of “the establishment of a water grid, including an integrated network of pipelines, pumping stations, reservoirs, and other works for the conveyance of water between river basins, water sources, and areas of water use in the state;”
- Connect the establishment, construction, operation and management of the water grid to the state water planning process;
- Evaluate alternative methods for ownership, construction, operation, maintenance, control, and financing of the water grid;
- Identify and evaluate methods to fund the establishment of a water grid; and
- Evaluate methods of incorporating existing water conveyance infrastructure into a grid.

It is important to note that the legislation did not propose a study of *whether* a water grid was needed or even a good idea; the proposal was to study *how* to create, fund, and operate it.

There was a foregone conclusion on the part of the proposal backers, which included energy interests seeking to benefit from the production and sale of power to move large volumes of water around the state, that a water grid should be pursued.

The water “gridzilla,” however, was opposed by environmen-

talists, many rural and East Texas interests, private property rights advocates, and many fiscal conservatives for a variety of reasons:

- Texas already has an extensive water planning process, costing millions of dollars, which looks at local or regional water transfers where they are needed and make sense; a state water grid is unnecessary to consider with these more targeted and reasonable water transactions.
- The TWDB is already working expeditiously to implement the new State Water Implementation Fund for Texas (SWIFT) to provide financial assistance for water projects in the regional and state water plans; requiring the agency to focus on a state water grid (including yet another revolving fund to finance it) would only distract it from implementing SWIFT.
- If the TWDB is to be directed to do a water study, what Texas really needs is a study of how much more the state might gain from expanding water efficiency and water conservation measures to minimize the need for additional water infrastructure and all the financial, environmental, and social costs that accompany some of that infrastructure.
- The current situation in California, which has had a system of massive water movements for decades, shows the folly of depending on a water grid in times of drought and also demonstrates the negative impacts of such large-scale water transfers on areas where the water comes from.
- Private property rights are likely to be trampled by a massive water grid that would take private lands for the building of surface water reservoirs and would potentially deplete aquifers that rural areas depend on for their economic vitality.
- The proposed water grid makes no accommodation to the need to maintain river flows and freshwater inflows to the state’s highly productive bays and estuaries, which are important not only environmentally but also economically to millions of Texans.

HB 3298 did actually pass the House, with a somewhat surprising large vote in favor, perhaps aided by the assertion that “it’s only a study.” For environmentalists, it was disconcerting to see that despite the controversy over this proposal, there was little discussion of it on the House floor, and many usually reliable pro-environmental legislators in the House voted for the state water gridzilla. The main opposition to HB 3298 came from Tea Party conservatives and East Texas legislators. In part the outcome on the House floor may have reflected the fact that the bill came to the floor fairly late in the session as House members were trying to move as many of their bills to the Senate as possible. Some observers expected the bill to die in the Senate anyway.

Indeed, HB 3298 was pretty much dead on arrival in the Senate; the bill never even got out of committee despite being carried by the committee chair. The Senate version of water gridzilla, SB 1907, had earlier been voted out of committee but never had enough votes to be brought up on the Senate floor—thanks to opposition from both liberal Democrats and conservative Republicans. A later attempt to add water gridzilla language to another Senate bill on the House floor eventually faltered, and the monster was finally declared dead for the session.

As anyone who follows horror movies knows, however, monsters do not always stay dead. A state water gridzilla proposal is likely to be resurrected—a testimony to the tenacity of water development interests with grandiose ideas going all the way back to at least the 1968 Texas Water Plan. That plan proposed bringing water from the Mississippi River to pipe it around our state for the manifest destiny of Texas. The proposal was defeated at the polls by a coalition of environmentalists and fiscal conservatives.

Almost 50 years later, some things in Texas water politics have not changed. The struggle continues between those whose primary focus, for economic or other reasons, is to develop massive “new” water supplies and those who take a more comprehensive view that emphasizes water efficiency and management and meeting the water needs of both people and the environment.

Stay tuned for the next episode of “Texas Water Politics” in the 85th Texas Legislature.

TEXAS ALLIANCE OF GROUNDWATER DISTRICTS LEGISLATIVE SUMMARY 84th TEXAS LEGISLATURE, REGULAR SESSION

By Sarah Rountree Schlessinger, Executive Director, Texas Alliance of Groundwater Districts

The 84th Texas Legislature, Regular Session saw the introduction of more than 6,000 House and Senate bills, of which 1,323 were passed into law and 41 were vetoed by Governor Greg Abbott. Of these, the Texas Alliance of Groundwater Districts (TAGD) monitored over 300 bills by way of bimonthly tracking reports to its membership, and of which over 120 were identified as high priority groundwater bills. Regular TAGD Legislative Committee meetings were held throughout session to vote on and discuss those bills and to determine TAGD's position on them.

Statistically, both the House and Senate saw an increase in the number of bills filed this year. As such, it was an accurately predicted busy but overall positive groundwater session. TAGD's Legislative Committee showed active engagement throughout, providing expert testimony when necessary and working collaboratively with other stakeholder groups such as the Texas Water Conservation Association (TWCA) Groundwater Consensus Committee.

TAGD's membership at large carried well this session's particular interest in and focus on groundwater conservation districts (GCDs) and can expect a number of signed bills to directly affect daily operations, permitting processes, and regional planning efforts. The 84th Legislative Session also saw a number of local GCD bills, with the creation of 2 new GCDs, the annexation of the Barton Springs-Edwards Aquifer Conservation District as well as local election and fee setting bills.

GCD administration and operations

A number of positive operational housekeeping bills were passed this session. Two of these provide for the use of GCD websites as being in reasonable compliance with requests under the Public Information Act (HB 685) as well as public meeting posting requirements (HB 3357). Estes' Senate Bill (SB) 1267 similarly addresses the Administrative Procedure Act, defining the requirements for posting notice of a hearing in a contested case. Keffer's House Bill (HB) 2767 achieved TAGD and TWCA consensus support, serving as a Chapter 36 clean-up bill and providing clarification of terminology.

Permitting

From a groundwater permitting perspective, the passage of 3 bills in particular should be noted. HB 2179 cleans up the existing permit-hearing process in Chapter 36 of the Water Code, further defining the boundaries of board action as it

relates to contested case hearings and preliminary hearings. SB 854 positively streamlines GCD operations by allowing for the automatic renewal of an operating permit without a hearing, provided certain requirements are met.

The passage of HB 655 provides definition of an aquifer storage and recovery (ASR) project and clarification on its permitting process. The bill states that while ASR wells are required to be registered with a GCD and subject to regular well registration fees, the Texas Commission on Environmental Quality (TCEQ) holds exclusive jurisdiction over its permitting. HB 655 requires the TCEQ to limit the recoverable amount of water from the project to the total amount injected, requiring further limitation if it finds unrecoverable losses will occur. The bill further defines that should the project produce more water than the amount authorized for withdrawal by the TCEQ, a GCD's spacing production, permitting rules and fees will apply to the withdrawals above the amount authorized.

Regional planning

Much attention was given to the subject of interstate cooperation and the perception of heterogeneous groundwater management. On a state level, HB 163 addresses interstate cooperation and regional water issues by amending Chapter 8 of the Water Code, laying out the conditions for the water commission created to advise the Governor and the Legislature and renaming it the Southwestern States Water Commission. HB 30 similarly addresses regional water planning by requiring the inclusion of large-scale desalination facilities in regional water plans and expanding the definition of desalination to include both seawater and brackish groundwater.

Perhaps the most significant in regional planning, however, is the passage of HB 200, which revises the desired future conditions (DFCs) appeals process. As part of its revision, HB 200 adds a contested case hearing process for the appeal of a DFC via a State Office of Administrative Hearings (SOAH) hearing and allows a petitioner to appeal a district's final decision to a local district court.

GCD boards

Responding to the increasing pressure placed on district board members, the passage of HB 3163 will positively affect GCD boards and their decision-making process. HB 3163 states that a district board member acting in their individual capacity is immune from suit and liability for actions taken

on behalf of the board. Further, HB 3163 determines the attempt to bring suit against a board member for those actions as constituting coercion of a public official.

Local elections

The 84th Legislative Session also saw the passage of a number of local election bills (i.e. HB 1819, SB 363, and SB 2030). Benefiting further housekeeping and financial savings for GCDs, Fraser's SB 733 extends the deadline for a political subdivision to change its election date to the uniform election date to December 31, 2016.

New GCDs

HB 2407 Filed Without Signature: Effective Immediately

Relating to the creation of the Comal Trinity Groundwater Conservation District.

HB 3405 Filed Without Signature: Effective Immediately

Relating to the territory and authority of the Barton Springs/Edwards Aquifer Conservation District to regulate certain wells for the production of groundwater.

HB 4207 Filed Without Signature: Effective 9/1/15

Relating to the creation of the Aransas County Groundwater Conservation District.

Drillers, real estate, and research

Beyond bills directly affecting GCD operations, a number of significant groundwater bills saw success this session. HB 930 amends the Occupations Code by authorizing the Texas Department of Licensing and Registration (TDLR) to reinstate the apprentice driller and apprentice pump installer program. The passage of this bill and restoration of TDLR's programs will help protect Texas aquifers and compliment GCD efforts by ensuring that water well drillers and pump installers receive proper guidance.

Similarly, HB 1221's amendment of the Texas Property Code will compliment GCD involvement in local management by requiring sellers of residential real property to include GCD information as a disclosure form provided to potential buyers. At the state level, the passage of HB 1232 will benefit groundwater management by requiring the TWDB to conduct a study to define the quality and quantity of groundwater and to produce a map showing the area and water quality of aquifer by December 31, 2016.

Vetoed Bills

HB 2647: Vetoed

Relating to a limitation on the authority to curtail ground-water production from wells used for power generation or mining.

Governor Abbott's objections to HB 2647 are expressed in his June 20, 2015 Proclamation, in which he states that HB 2647 "eliminates local discretion by mandating the preferential treatment of certain types of groundwater use over other important uses." Governor Abbott's veto is significant in its protection of GCDs' pursuits to implement management strategies that treat all users equitably and its recognition of the benefit of local groundwater management that responds to local needs and concerns.

Looking ahead

Looking ahead, we expect to see substantial change in Texas water policy leadership. Shortly after the session closed, long-time water policy champions Senator Fraser and Representative Keffer announced that they would not be seeking reelection, followed closely by an announcement of retirement from the Texas Water Development Board (TWDB) Chairman Rubenstein. TAGD intends to participate in the inheritance of their institutional knowledge that has carried the development of Texas water legislation.

With the adjournment of the 84th Texas Legislature on Monday, June 1, 2015, TAGD provided its membership with a final tracking report of a total of 40 bills. Governor Abbott had until Sunday, June 21, 2015 to sign or veto bills. Of those 40, the following bills were passed:

Passed Bills

HB 23 Signed: Effective 9/1/2015

Relating to disclosure of certain relationships with local government officers and vendors.

HB 30 Signed: Effective 6/19/2015

Relating to the development of brackish groundwater.

HB 40 Signed: Effective immediately

Relating to the express preemption of regulation of oil and gas operations and the exclusive jurisdiction of those operations by the state.

HB 163 Signed: Effective 9/1/2015

Relating to interstate cooperation to address regional water issues.

HB 200 Signed: Effective 9/1/15

Relating to the regulation of groundwater.

HB 280 Signed: Effective 9/1/2015

Relating to the information required to be posted by the TWDB on the board's Internet website regarding the use of the State Water Implementation Fund for Texas.

HB 655 Signed: Effective immediately

Relating to the storage and recovery of water in aquifers.

HB 685 Signed: Effective 9/1/2015

Relating to the production of public information available on the website of a political subdivision of this state.

HB 930 Signed: Effective 9/1/2015

Relating to water well drillers and pump installers.

HB 1221 Signed: Effective 1/1/16

Relating to seller's disclosures in connection with residential real property subject to groundwater regulation.

HB 1232 Signed: Effective immediately

Relating to a study by the TWDB regarding the mapping of groundwater in confined and unconfined aquifers.

HB 1378 Signed: Effective 1/1/16

Relating to annual financial reporting of debt information.

HB 1421 Signed: Effective immediately

Relating to fees charged by the Coastal Plains Groundwater Conservation District.

HB 1819 Filed Without Signature: Effective immediately

Relating to the date for the election of directors of the Hill Country Underground Water Conservation District.

HB 2031 Signed: Effective immediately

Relating to the development and production of marine seawater desalination, integrated marine seawater desalination, and facilities for the storage, conveyance, and delivery of desalinated marine seawater.

HB 2154 Signed: See remarks for effective date

Relating to the functions and operation of the State Office of Administrative Hearings.

HB 2179 Signed: Effective immediately

Relating to hearings that concern the issuance of permits by a groundwater conservation district.

HB 2230 Signed: Effective 9/1/15

Relating to the authority of the TCEQ to authorize an injection well used for oil and gas waste disposal to be used for the disposal of nonhazardous brine.

HB 2407 Filed Without Signature: Effective immediately

Relating to the creation of the Comal Trinity Groundwater Conservation District.

HB 2767 Signed: Effective immediately

Relating to the powers, duties, and administration of groundwater conservation districts.

HB 3163 Signed: Effective immediately

Relating to filing suit against board members of groundwater conservation districts.

HB 3357 Signed: Effective 9/1/15

Relating to permitted methods for certain political subdivisions to post notice of a meeting.

HB 3405 Filed without signature: Effective immediately

Relating to the territory and authority of the Barton Springs/Edwards Aquifer Conservation District to regulate certain wells for the production of groundwater.

HB 3858 Signed: Effective immediately

Relating to fees charged by the Coastal Bend Groundwater Conservation District.

HB 4097 Signed: Effective immediately

Relating to seawater desalination projects.

HB 4112 Signed: Effective immediately

Relating to the rights of an owner of groundwater.

HB 4207 Filed without signature: Effective 9/1/15

Relating to the creation of the Aransas County Groundwater Conservation District.

SB 363 Signed: Effective 9/1/15

Relating to election dates for directors of the Bandera County River Authority and Groundwater District.

SB 374 Signed: Effective 9/1/15

Relating to requiring state agencies to participate in the federal electronic verification of employment authorization program, or Everify.

SB 551 Signed: Effective 9/1/15

Relating to the duty of the Water Conservation Advisory

Council to submit a report and recommendations regarding water conservation in this state.

SB 733 Signed: Effective immediately

Relating to the authority of certain political subdivisions to change the date of their general elections.

SB 854 Signed: Effective 9/1/15

Relating to the renewal or amendment of certain permits issued by groundwater conservation districts .

SB 991 Signed: Effective immediately

Relating to a requirement that the General Land Office and the TWDB conduct a study regarding the use of wind and solar power to develop and desalinate brackish groundwater.

SB 1101 Signed: Effective 9/1/15

Relating to the authority to determine the supply of groundwater in certain regional water plans.

SB 1267 Signed: Effective 9/1/15

Relating to contested cases conducted under the Administrative Procedure Act.

SB 1336 Signed: Effective 9/1/15

Relating to the construction of laws and election dates of certain groundwater conservation districts.

SB 1812 Signed: Effective immediately

Relating to transparency in the reporting of eminent domain authority and the creation of an eminent domain database.

SB 2030 Signed: Effective 9/1/15

Relating to the election date of the North Plains Groundwater Conservation District.

SB 2049 Signed: Effective 9/1/15

Relating to qualifications of members of the board of directors of the Lone Star Groundwater Conservation District.

TEXAS WATER INFRASTRUCTURE NETWORK SUMMARY OF LEGISLATION IMPACTING THE TEXAS WATER INFRASTRUCTURE MARKET IN THE 84th TEXAS STATE LEGISLATURE

By Perry L. Fowler, Executive Director, Texas Water Infrastructure Network

The Texas Water Infrastructure Network (TxWIN) is a 501 C6 non-profit trade association founded in September, 2013 to represent the interests of general contractors, subcontractors, service suppliers, and equipment and materials suppliers and manufacturers involved in the planning and construction of water infrastructure projects. TxWIN is the only statewide association specifically focused on construction issues and advocacy in the Texas water infrastructure market. TxWIN's primary focus is to provide our advocacy and resources for our membership in active partnership with owners, legislators, regulatory bodies and other industry organizations to ensure a healthy and competitive construction market place that promotes value for public dollars invested in water infrastructure projects.

TxWIN entered the 2015 Texas Legislative Session with a narrow focus on promoting specific contracting reforms and supporting a broader legislative agenda to promote fair and ethical contracting, reduced regulatory burdens, and responsible policy in the promotion of Texas water infrastructure projects. TxWIN tracked over 350 bills throughout the course of the session, and the following legislation is of particular interest for governmental entities and others involved in the finance, construction, and design of water infrastructure projects.

While there are still many issues in the contracting realm that need to be addressed, overall this was a very positive session for the promotion of the TxWIN legislative agenda, which, in turn, should benefit all facets of the broader market including owners and the public.

TxWIN looks forward in the 2017 session to working closely with the owner and design professional community in addition to legislators and regulators to address a number of contracting and procurement issues in the promotion of a healthy and competitive Texas construction market.

TxWIN-supported legislation that passed

House Bill (HB) 23 (Davis/Nelson)

Relating to disclosure of certain relationships with local government officers and vendors.

TxWIN supported this local ethics and contracting legislation, which increases disclosure and reporting requirements for local government officials and employees who may influence in the contract selection process, and also includes disclosure requirements for vendors and other entities seeking to enter contracts with political subdivisions. HB 23 expands

definitions of what constitutes "conflicts of interest" providing criminal penalties for failure to disclose gifts including travel and meals. This may be 1 of the most important bills to pass this session to ensure that there is transparency on the local level regarding those who seek to influence local contracting processes.

HB 2475 (Geren/Eltife)

Relating to the establishment of the Center for Alternative Finance and Procurement within the Texas Facilities Commission and to public and private partnerships.

TxWIN supported legislation that clarifies rules and procedures and promotes transparency for public-private partnerships including application of Government Code 2269 for alternative project delivery contracting and procurement process.

HB 2634 (Kuempel/Zaffirini)

Relating to the construction manager-at-risk used by a governmental entity.

TxWIN supported this contracting reform legislation that reforms the construction manager-at-risk (CMAR) project delivery method and contracting process. Current public works contracting law for CMAR in Gov. Code 2269.251 calls for separate contracts for design and construction but failed to expressly ensure that said contracts were awarded to separate entities per industry best practices, allowing qualifications to be established which favored related "construction" entities of design firms thus undermining the competitive process. HB 2634 amends the law by prohibiting related entities from serving as designer and construction manager-at-risk. For example, an integrated engineering firm may not serve as both the designer and construction manager, or general contractor. This change in the law eliminates potential conflicts of interest and misuse of the CMAR method as de-facto design-build without appropriate safeguards where qualifications might be crafted which undermine the competitive process for procuring the CMAR contractor. HB 2634 not only ensures the integrity of the competitive process but also ensures the appropriate use of the CMAR procurement and project delivery method, eliminating potential conflicts of interest that undermine protections for public owners. This may be the most significant contracting legislation of the session with respect to the design and construction of water infrastructure projects.

HCR 96 (Hunter)

Requesting the Speaker of the House of Representatives and the Lieutenant Governor to create a joint interim committee to study the issue of advertising public notices.

Several bills were introduced this session with the goal of reducing costs, making public notices more accessible to the public, and providing additional flexibility to political subdivisions through the use of electronic means. This concurrent resolution assures the issue will be discussed and evaluated in the interim.

Senate Bill (SB) 20 (Nelson/Price)

Relating to state agency contracting.

Omnibus state contracting reform bill. Although this legislation will not affect financial assistance from the TWDB or locally administered funds, TxWIN will monitor the implementation of this legislation, which is intended to promote fair and ethical contracting reforms for direct state contracting and purchasing including additional review authority for large contracts and training for state agency purchasing personnel.

SB 709 (Fraser/Morrison)

Relating to environmental permitting procedures for applications filed with the Texas Commission on Environmental Quality.

This legislation expedites and streamlines TCEQ permitting process.

Other legislation of interest that passed***SB 1081***

Relating to the disclosure of certain information under a consolidated insurance program.

HB 2049

Indemnification and duties of engineers and architects under certain governmental contracts.

This legislation removes from the obligations of architects and engineers to defend local governments and limits their obligation to repay local governments for liability from negligence or fault. The bill also allows local governments to be insured on the architect's or engineer's general liability policy and establishes a standard of care for architects and engineers to perform services.

Other significant contracting and related legislation that did not pass***HB 1007***

Relating to the purchase of iron, steel, and manufactured goods made in the United States for certain state, state-aided,

and governmental entity construction projects.

This legislation would have applied U.S. iron, steel and manufactured good requirements to all state and local public construction contracts adding increased costs, regulatory burdens and unnecessary liability for contractors. These types of policies diminish local control and fail to recognize the global supply chain that is particularly important with regard to highly complex technologies used in water and wastewater treatment plants.

SB 1337

Relating to the authority of the TWDB to provide financial assistance to political subdivisions for water supply projects.

This legislation would have expanded TWDB flexibility for financial assistance programs. Unfortunately, an amendment expanding "Buy American" requirements was added to the legislation on the floor of the house that would have expanded application of requirements for U.S. iron, steel materials and manufactured goods to SWIFT funded projects thus increasing costs, regulatory burdens and constraining choices of financial assistance recipients.

HB 3687

Relating to design-build procedures for civil works projects.

This legislation would have added 1-step design-build authority for civil works construction projects, creating a subjective procurement process without cost considerations that would have seriously impacted the ability to determine project costs and conduct competitive procurements. The bill also sought to remove all current population and project limits. Without additional safeguards to ensure fair competition in the evaluation of design-build qualifications and additional procurement safeguards TxWIN will not support expansion of current design-build authority.

HB 3688

Relating to the process for the selection of construction managers-at-risk used by governmental entities.

This legislation would have completely gutted the CMAR process allowing it to be used as de facto design build without any appropriate safeguards or rules.

HB 3939

Relating to the requirements for construction projects for certain public works projects.

This retainage reform legislation would have required retainage to be placed in an interest-bearing account for public works construction projects, and prohibited retainage in excess of 5% without consent of the prime contractor. HB 3939 also would have eliminated the practice of "hidden retainage" by prohibiting withholding of payments on additional items in

the schedule of values or contract general conditions. The legislation also prohibited the practice of withholding retainage for non-allocated project funds and withholding of retainage during the warranty period. The legislation also established a trigger for release of retainage once facilities were capable of being used for their intended purpose.

TxWIN looks forward to working with the owner community in the interim to address retainage issues in the hope of reaching consensus on reforms that will bring more fairness to the process.